IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18152 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANJOORHUSSAIN NANNAMIYA SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18152 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MS ARCHANA RAVAL, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/06/2004

ORAL JUDGEMENT

The petitioner is detained under preventive detention by an order dated 28-11-2003 and booked under

P.A.S.A. In the detention order, there is a reference about three criminal cases pending against the petitioner. The said cases are filed under various provisions of the Bombay Prohibition Act. Out of said three cases, which are mentioned in the grounds of detention, the petitioner is released on bail in one case at serial No.1 and in other two cases, he is not arrested and is absconding. As per the detention order, the petitioner is dealing in illicit liquor and such activities are harmful to public order. In the detention order, it is mentioned that as per the definition given under Section 2 (b), the petitioner is a "bootlegger" and he is selling and dealing in foreign liquor. It is mentioned in the detention order that in connection with cases No.2 and 3, the petitioner is absconding and after his arrest he may prefer appropriate application for bail and after being released on bail he may continue this activity again.

2) The learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

"There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be

taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

3) So far as the facts of the present case are concerned, here also it is stated that after being arrested, the petitioner may move bail application and after being released on bail, he may continue with this activity again. In an identical situation, this Court has found that subjective satisfaction of the authority for detaining the detenu is without any basis.

4) Accordingly, factual position in both these cases is similar and in that view of the matter, this petition is required to be allowed and it is allowed, because the authority has not specifically mentioned as to on what basis it has reached the conclusion that the petitioner, after his arrest, may move bail application and he may be released on bail.

5) Since the point involved in this case is covered by the aforesaid judgement of this Court, this petition is required to be allowed and it is allowed. The order of detention dated 28-11-2003 is quashed and set aside. The detenu, Manjoorhussain Nannamiya Sheikh is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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